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All Seasons Climate Control, Inc. and Sheet Metal Workers International Association, Local No. 33 of Northern Ohio, AFL-CIO. Case 8-CA-36459.

May 31, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER,
AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on March 22, 2006, the General Counsel issued the complaint on April 5, 2006, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 8-RC-16733. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On April 21, 2006, the General Counsel filed a Motion for Summary Judgment. On April 24, 2006, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but contests the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, the Respondent denies that the information requested by the Union is necessary and relevant.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See, *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent admits, that by letter dated February 1, 2006, the Union requested the following information:

- a. A list of current employees, including their names, dates of hire, rates of pay, job classifications, last known address, phone number, date of completion of any probationary period, and social security number.
- b. A copy of all current company personnel policies, practices, and/or procedures.
- c. A statement and description of any company personnel policies, practices, and/or procedures other than those mentioned above.
- d. A copy of all fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees.
- e. Copies of current health care costs for each employee.
- f. Copies of all current job descriptions.
- g. Copies of any company wage or salary plans.
- h. Copies of all disciplinary notices, warnings, or records of disciplinary personnel actions for all persons employed by the company over the last 18 months.
- i. A statement and description of all wage and salary plans which are not provided under the above.
- j. A copy of the current lay-off policy, and any recall lists maintained by the company.
- k. A list of all current projects, along with the tentative start and completion dates for each project.

In its answer, the Respondent relies on its challenge to the Union's certification as a defense to its refusal to provide the Union with the requested information. The Respondent also generally denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees. However, it is well established that the foregoing types of employment information, with the exception of employee social security numbers, is presumptively relevant for purposes of collective bargaining and

must be furnished on request.¹ See, e.g., *Streicher Mobile Fueling, Inc.*, supra; *Super K-Mart*, 322 NLRB 583 (1996); *Maple View Manor*, 320 NLRB 1149 (1996), enfd. 107 F.3d 923 (D.C. Cir. 1997). The Respondent has not provided any basis for rebutting this presumption.

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested to the extent the information pertains to current or former unit employees, with the exception of employee social security numbers.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation with an office and place of business located at 19 East Main Street, Norwalk, Ohio, has been engaged in the construction business by installing HVAC systems.

Annually, the Respondent, in conducting its business operations described above, purchased and received at its Norwalk, Ohio facility goods valued in excess of \$50,000 from other enterprises located within the State of Ohio, each of which other enterprises had received these goods directly from points outside the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Sheet Metal Workers International Association, Local Union No. 33, of Northern Ohio, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

¹ The Board has held that employee social security numbers are not presumptively relevant and that the Union must therefore demonstrate the relevance of such information. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 fn. 2 (2003) (summary judgment denied with respect to social security numbers). Here, the pleadings fail to indicate why the Union wanted the social security numbers, or to otherwise indicate the relevance of this information. Accordingly, we cannot conclude, on the pleadings, that the Respondent was obligated to provide this information to the Union and we therefore deny the Motion for Summary Judgment with respect to the Respondent's alleged failure to do so, and remand that issue to the Regional Director for further appropriate action. This does not excuse the Respondent's failure to supply all of the other information requested by the Union. Such information is clearly relevant, and the Respondent's failure to provide the information on request violated Sec. 8(a)(5) of the Act. See *id.*; *Streicher Mobile Fueling, Inc.*, 340 NLRB 994, 995 (2003). In so finding, we construe the Union's request for such information as pertaining to unit employees, although the information requested is not described in these specific terms. See *id.*

² Thus, we deny the Respondent's requests that the complaint be dismissed and that the Respondent be awarded attorneys' fees.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 15, 2005, the Union was certified on January 25, 2006, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees who perform plumbing, pipefitting, electrical, insulating, carpentry, boiler making, laboring, and sheet metal work, truck driver/utilitymen, and parts coordinators/utilitymen that are employed by the Employer at its 19 E. Main Street, Norwalk, Ohio 44857 facility, the sole facility involved herein, but excluding all salespersons, office clerical employees, guards, professional employees and supervisors as defined in the Act, and all other employees.³

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about February 1, 2006, the Union, by certified mail, has requested that the Respondent meet and bargain with it as the exclusive collective-bargaining representative for the certified unit and that the Respondent provide it with specific information. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since on or about February 3, 2006, the Respondent has failed and refused to meet and bargain with the Union and to furnish it with the requested information. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since February 3, 2006, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to provide the Union with requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respon-

³ The unit description set forth in the complaint contained a minor error and did not precisely describe the certified unit.

dent to furnish the Union with the information requested, to the extent the information pertains to current or former unit employees, with the exception of employee social security numbers.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, All Seasons Climate Control, Inc., Norwalk, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Sheet Metal Workers International Association, Local Union No. 33, of Northern Ohio, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees who perform plumbing, pipefitting, electrical, insulating, carpentry, boiler making, laboring, and sheet metal work, truck driver/utilitymen, and parts coordinators/utilitymen that are employed by the Employer at its 19 E. Main Street, Norwalk, Ohio 44857 facility, the sole facility involved herein, but excluding all salespersons, office clerical employees, guards, professional employees and supervisors as defined in the Act, and all other employees.

(b) Furnish the Union with the information that it requested on or about February 1, 2006, by letter, to the extent the information pertains to current or former unit

employees, with the exception of employee social security numbers.

(c) Within 14 days after service by the Region, post at its facility in Norwalk, Ohio, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 3, 2006.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 2006

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Sheet Metal Workers International Association, Local Union No. 33, of Northern Ohio, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and

conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time employees who perform plumbing, pipefitting, electrical, insulating, carpentry, boiler making, laboring, and sheet metal work, truck driver/utilitymen, and parts coordinators/utilitymen that are employed by us at our 19 E. Main Street, Norwalk, Ohio 44857 facility, the sole facility involved herein, but excluding all salespersons, office clerical employees, guards, professional employees and supervisors as defined in the Act, and all other employees.

WE WILL furnish the Union with the information it requested on or about February 1, 2006, by letter, to the extent the information pertains to current or former unit employees, with the exception of employee social security numbers.

ALL SEASONS CLIMATE CONTROL, INC.